

Senate Bill 447

By: Senators Goggans of the 7th, Bulloch of the 11th, Kemp of the 46th, Pearson of the 51st,
Henson of the 41st and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 8 of Title 2 of the Official Code of Georgia Annotated, the "Georgia
2 Agricultural Commodities Promotion Act," so as to create the Georgia Blueberry
3 Commission; to define certain terms; to provide for membership, appointment, election,
4 terms, and compensation; to provide for powers; to provide for organization; to provide for
5 the receipt, collection, and disbursement of funds; to provide for liability; to provide for
6 marketing orders; to provide for notice and hearing; to provide for publication of a certain
7 report; to provide for the levying and collection of assessments; to provide for the
8 maintenance of records; to provide for compliance; to provide for a penalty; to provide for
9 applicability of the Georgia Administrative Procedure Act; to provide for related matters; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Chapter 8 of Title 2 of the Official Code of Georgia Annotated, the "Georgia Agricultural
14 Commodities Promotion Act," is amended by inserting at the end thereof a new article to read
15 as follows:

16 "Article 5

17 2-8-130.

18 This article shall apply only to the Georgia Blueberry Commission.

19 2-8-131.

20 As used in this article, the term:

21 (1) 'Advertising and sales promotion' means, in addition to the ordinarily accepted
22 meaning thereof, research and development in the areas of breeder programs, production

S. B. 447

- 1 -

1 programs, chemicals, fertilizers, and health benefits for the general public, and the
2 general promotion of the blueberry industry in Georgia.

3 (2) 'Blueberries' means blueberries and blueberry products produced in this state or any
4 class, variety, or utilization thereof, either in their natural state or as processed by a
5 processor or producer for the purpose of marketing such product.

6 (3) 'Commission' means the Georgia Blueberry Commission created under this article.

7 (4) 'Distributor' means any person who engages in the operation of selling, marketing,
8 or distributing blueberries which such person has produced or has purchased or acquired
9 from a producer or which such person is marketing on behalf of a producer, whether as
10 owner, agent, employee, broker, or otherwise. The term shall not include a retailer as
11 defined in this Code section, except a retailer who purchases or acquires from, or handles
12 on behalf of, any producer of blueberries not heretofore subjected to regulation by the
13 marketing order covering blueberries.

14 (5) 'Handler' means any person engaged within this state as a distributor in the business
15 of distributing blueberries or any person engaged as a processor in the business of
16 processing blueberries.

17 (6) 'Marketing order' means an order issued pursuant to this article prescribing rules and
18 regulations governing the processing, distributing, or handling in any manner of
19 blueberries within this state or establishing an assessment for financing the programs
20 established under this article.

21 (7) 'Person' means an individual, firm, corporation, association, or any other business unit
22 or any combination thereof and includes any state agency which engages in any of the
23 commercial activities regulated pursuant to this article.

24 (8) 'Processor' means any person engaged within this state in the operation of receiving,
25 grading, packing, canning, extracting, preserving, grinding, crushing, or changing the
26 form of blueberries for the purpose of preparing blueberries for market or of marketing
27 such blueberries or engaged in any other activities performed for the purpose of preparing
28 such blueberries for market or of marketing such blueberries but shall not include a
29 person engaged in manufacturing another and different product from blueberries so
30 changed in form. The term 'processor' shall not include an agent of the processor or any
31 person who receives blueberries for or on the account of another person.

32 (9) 'Producer' means any person engaged within this state in the business of producing
33 or causing to be produced for market at least 2,000 pounds annually of blueberries.

34 (10) 'Producer marketing' or 'marketed by producers' means any or all operations
35 performed by any producer in preparing blueberries for market and includes selling,

1 delivering, or disposing of, for commercial purposes, blueberries which the producer has
2 produced to any handler as defined in this Code section.

3 (11) 'Retailer' means any person who purchases or acquires blueberries for resale at retail
4 to the general public for consumption off the premises; however, such person shall also
5 be included within the definition of 'distributor' to the extent that he or she engages in the
6 business of a distributor.

7 (12) 'Seasonal marketing regulations' means marketing regulations, applicable to a
8 particular marketing order, made effective as prescribed in this article for the purpose of
9 carrying into effect, by administrative order, the marketing regulatory authorizations and
10 the provisions of such marketing order, as such authorizations or provisions may be
11 applicable to or required by changing economic or marketing conditions and requirements
12 from time to time during each marketing season in which such marketing order may
13 operate. Such seasonal marketing regulations shall not extend beyond the marketing
14 order concerned nor shall they modify or change the language of such marketing order.

15 (13) 'To distribute' means to engage in the business of a distributor.

16 (14) 'To handle' means to engage in the business of a handler.

17 (15) 'To process' means to engage in the business of a processor.

18 2-8-132.

19 (a) The Georgia Blueberry Commission shall be composed of seven members, who shall
20 be blueberry producers, to be elected in the manner provided in Code Section 2-8-134. The
21 commission shall consist of the following offices: president, vice president, immediate past
22 president, secretary/treasurer, representative of District A, representative of District B, and
23 research officer.

24 (b) The initial members of the commission shall be appointed by a committee consisting
25 of the chairperson of the House of Representatives Committee on Agriculture and
26 Consumer Affairs and the chairperson of the Senate Agriculture and Consumer Affairs
27 Committee. An initial appointment shall be made to the position of immediate past
28 president notwithstanding the fact that no such person exists at the time of the initial
29 appointment. Prior to making such appointments, the committee shall seek significant
30 input from members of the blueberry industry.

31 (c) Initial appointments shall be for terms of four years. Thereafter, successors shall be
32 elected for terms of four years each and until their successors are elected and qualified,
33 except that each president shall automatically serve a four-year term as immediate past
34 president upon completion of his or her term as president.

1 2-8-133.

2 For purposes of electing the two members of the commission representing District A and
3 District B after the initial appointments, the commission shall divide those counties of the
4 state in which blueberries are produced into two such districts, each of which shall have
5 approximately equal production of blueberries. After the initial appointments, each
6 representative of a district shall reside in that district. All other members shall reside in one
7 of the two districts.

8 2-8-134.

9 (a)(1) Except as otherwise provided in this Code section, elections shall be called and
10 conducted in the manner specified by the commission. One member shall be elected from
11 each district by the producers of blueberries residing in such district. Other members
12 shall be elected at large. To be eligible for election, a person must be a blueberry
13 producer. No producer of blueberries residing within the district shall be denied the right
14 to seek election to membership on the commission.

15 (2) A person must receive a majority of the votes cast for a position in order to be elected
16 to such position; provided, however, if only one person qualifies for such position, no
17 election shall be required and that person shall automatically become a member of the
18 commission. If no person receives a majority of the votes cast for such position, a run-off
19 election shall be conducted by the commission. Any member may succeed himself or
20 herself as a member of the commission.

21 (3) Vacancies in the membership of the commission shall be filled by election in the
22 same manner as the original election of such members. Any person elected to fill a
23 vacancy shall be elected for the remainder of the unexpired term.

24 (b) The members of the commission, with the exception of the secretary/treasurer, shall
25 receive no compensation but may be reimbursed expenses as provided by the commission,
26 and such funds shall be payable from the funds of the commission. The commission shall
27 establish the compensation of the secretary/treasurer. The commission shall keep
28 comprehensive and detailed records of all compensation and expense reimbursement paid
29 to each member of the commission. In connection with the audits provided for in
30 subsection (g) of Code Section 2-8-145, the state auditor shall annually prepare a
31 comprehensive and detailed report of the compensation and reimbursement paid to each
32 member of the commission and shall provide a copy of such report to the commission; and
33 such report shall be available to any producer of blueberries upon written request of any
34 such producer.

(c) It shall be the duty of the commission to certify to the Secretary of State the membership of the commission and each change in membership as the same occurs.

2-8-135.

(a) The commission is authorized to appoint advisory boards, special committees, and individuals, including technical and clerical personnel, to advise, aid, and assist the commission in the performance of its duties. Compensation for such services shall be fixed by the commission and may be paid from the funds of the commission. The Attorney General shall represent the commission in legal matters and shall be the attorney for the commission. If the Attorney General determines that outside legal counsel is necessary or desirable in connection with any legal matter of the commission, he or she shall so inform the commission and, upon approval of the commission, he or she shall employ such outside counsel. Compensation for such outside counsel shall be agreed upon between such counsel and the Attorney General, subject to the approval of the commission. Such compensation shall be paid from the funds of the commission. Neither Code Section 16-10-9 nor any other law shall prohibit or be applicable to the employment of such counsel.

(b) The commission is authorized to accept donations, gifts, and other property and to use the same for commission purposes. The commission may exercise the powers and authority conferred by law upon corporations.

(c) The commission shall continue as a public corporation and instrumentality of the State of Georgia until abolished by law or until terminated by referendum.

(d) The commission is authorized to acquire, lease as lessee, purchase, hold, own, and use any franchise or real or personal property, whether tangible or intangible, or any interest therein and, whenever the same is no longer required for purposes of the commission, to sell, lease as lessor, transfer, or dispose thereof or to exchange the same for other property or rights which are useful for its purposes.

2-8-136.

The commission shall be a public corporation and an instrumentality of the State of Georgia. By that name, style, and title, the commission may contract and be contracted with, implead and be impleaded, and complain and defend in all courts. Four members of the commission shall constitute a quorum. The commission shall assume the duties and exercise the authority provided in this article without further formality than that provided in this article. Each member of the commission shall be a public officer and shall take an oath of office faithfully to perform his or her duties. Such oath shall be administered by

1 the Governor or some other person qualified to administer oaths. The fact of a member's
2 election shall be certified to the Secretary of State, who shall issue the appropriate
3 commission under the seal of his or her office.

4 2-8-137.

5 The commission is authorized and it shall be its duty to receive, collect, and disburse the
6 funds of the commission. Funds received by the commission under this article shall be held
7 in trust for the commission. Such funds shall be deposited, accounted for, and disbursed
8 in the same manner as the funds of this state but shall not be required to be deposited in the
9 state treasury and appropriated therefrom as are other state funds. It is the express intent
10 and purpose of this article to authorize the receipt, collection, and disbursement by the
11 commission of such funds as trust funds of the commission without complying with the
12 requirement applicable to funds collected for the use and benefit of the state.

13 2-8-138.

14 Any persons who handle funds under this article shall be bonded with good and sufficient
15 surety in an amount determined by the commission for the accounting of any and all funds
16 coming into their hands. All checks, drafts, and negotiable instruments which are drawn
17 on or payable from the funds of the Georgia Blueberry Commission shall be signed by both
18 the president and the secretary/treasurer of the commission.

19 2-8-139.

20 The members and employees of the commission shall not be held responsible individually
21 in any way whatsoever to any producer, processor, distributor, or other handler or to any
22 other person for errors in judgment, mistakes, or other acts, either of commission or
23 omission, as principal, agent, person, or employee, except for their own individual acts of
24 dishonesty or crime. No such person or employee shall be held responsible individually
25 for any act or omission of any other member of the commission. The liability of the
26 members of the commission shall be several and not joint and no member shall be liable
27 for the default of any other member.

1 2-8-140.

2 The commission is authorized to confer with and to make any information obtained
3 pursuant to this article available to the duly constituted governmental authorities of this
4 state, of other states, of political subdivisions of this state or other states, and of the United
5 States who, by reason of their duties, have legitimate concern with provisions of this article
6 and to cooperate with all such authorities for the purpose of obtaining administrative
7 uniformity and achieving the objectives of this article.

8 2-8-141.

9 (a) The commission is authorized to issue, administer, and enforce the provisions of
10 marketing orders regulating producer marketing or the handling of blueberries within this
11 state.

12 (b)(1) Whenever the commission has reason to believe that the issuance of a marketing
13 order or amendments to an existing marketing order will tend to effectuate the declared
14 policy of this article, it shall, either upon its own motion or upon the application of any
15 producer of blueberries or any organization of such persons, give due notice of and an
16 opportunity for a public hearing upon a proposed marketing order or amendments to an
17 existing marketing order.

18 (2) Notice of any hearing called for such purpose shall be given by the commission by
19 publishing a notice of such hearing for a period of not less than five days in a newspaper
20 of general circulation published in the capital of the state and in such other newspapers
21 as the commission may prescribe. No such public hearing shall be held prior to five days
22 after the last day of such period of publication. The commission shall also mail a copy
23 of such notice of hearing and a copy of such proposed marketing order or proposed
24 amendments to all producers of blueberries whose names and addresses appear upon lists
25 of such persons on file with the commission and who may be directly affected by the
26 provisions of such proposed marketing order or such proposed amendments. Such notice
27 of hearing shall in all respects comply with the requirements of Chapter 13 of Title 50,
28 the 'Georgia Administrative Procedure Act.'

29 (3) The hearing shall be public and all testimony shall be received under oath. A full and
30 complete record of the proceedings at such hearing shall be made and maintained on file
31 in the office of the commission. The hearing shall, in all respects, be conducted in
32 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The
33 hearing may be conducted by the commission or by a member of the commission, as may
34 be designated by the commission in each instance, but no decision shall be made based
35 on hearings conducted other than by the commission itself, at which a majority of the

1 members thereof are present, until the members of the commission have been afforded
2 an opportunity to review the hearing record. Where the commission conducts hearings,
3 its recommendation shall be based on the findings reached after a review of the record
4 of the hearing.

5 (c)(1) In order to provide the commission with accurate and reliable information with
6 respect to the persons who may be directly affected by any proposed marketing order for
7 blueberries when such information is not then on file with the commission, the
8 commission is authorized and directed, whenever the commission has reason to believe
9 that the issuance of a marketing order will tend to effectuate the declared policy of this
10 article or upon receipt of a written application for a hearing pursuant to subsection (b) of
11 this Code section, to notify all handlers of blueberries, by publication of a notice as
12 required in paragraph (2) of this subsection, to file with the commission within ten days
13 from the last date of such publication a report, properly certified, showing:

14 (A) The correct name and address of such handler;

15 (B) The quantities of blueberries affected by the proposed marketing order handled by
16 such handler in the marketing season next preceding the filing of such report;

17 (C) The correct names and addresses of all producers of blueberries who may be
18 directly affected by such proposed marketing order, from whom such handler received
19 blueberries in the marketing season next preceding the filing of such report; and

20 (D) The quantities of blueberries received by such handler from each such producer in
21 the marketing season next preceding the filing of such report.

22 (2) The notice to handlers requiring them to file a report shall be published by the
23 commission for a period of not less than five days in a newspaper of general circulation
24 published in the capital of the state and in such other newspaper or newspapers as the
25 commission may prescribe. The commission shall also mail a copy of such notice to all
26 handlers of blueberries whose names and addresses appear upon the lists on file with the
27 commission who may be directly affected by such proposed marketing order.

28 (3) Each handler of blueberries directly affected by a proposed marketing order shall file
29 his or her verified report with the commission within the time specified in paragraph (1)
30 of this subsection. Failure or refusal of any handler to file such report shall not invalidate
31 any proceeding taken or marketing order issued. The commission is authorized and
32 directed to proceed upon the basis of such information and reports as may otherwise be
33 available.

34 (4) From the reports so filed and the information so received or available to the
35 commission, including any proper corrections, the commission shall prepare a list of the
36 names and addresses of such producers and the volume of blueberries produced or

1 marketed by all such producers and a list of the names and addresses of such handlers and
2 the volume of blueberries handled by all such handlers directly affected by such proposed
3 marketing order or amendments thereto in the preceding marketing season. Such lists
4 shall constitute complete and conclusive lists for use in any finding made by the
5 commission pursuant to subsection (a) of Code Section 2-8-143, and such findings shall
6 be conclusive.

7 (5) The information contained in the individual reports of handlers filed with the
8 commission pursuant to this Code section shall not be made public in such form. The
9 information contained in such reports may be prepared in combined form for use by the
10 commission, its agents, or other interested persons in the formulation, administration, and
11 enforcement of a marketing order or may be made available pursuant to court order. Such
12 information shall not be made available to anyone for private purposes.

13 2-8-142.

14 If, upon the basis of the record of testimony and documentary evidence received at the
15 hearing provided for in Code Section 2-8-141 and the facts officially noticed therein from
16 official publications or institutions of recognized standing, the commission determines that
17 the issuance of a marketing order or an amendment will tend to effectuate the intent and
18 purpose of this article, it may recommend the promulgation of a marketing order or
19 amendment with respect to the matters specified in the hearing notice and supported by the
20 record, containing any or all of the following provisions, but no others:

21 (1) Provisions for the establishment of plans for advertising and sales promotion to
22 maintain present markets or to create new or larger markets for blueberries grown in this
23 state or for the prevention, modification, or removal of trade barriers which obstruct the
24 normal flow of blueberries to market. The commission is authorized to prepare, issue,
25 administer, and enforce plans for promoting the sale of blueberries, provided that any
26 such plan shall be directed toward promoting and increasing the sale, use, and utilization
27 of blueberries without reference to a particular brand or trade name; and provided,
28 further, that no advertising or sales promotion program shall be issued by the commission
29 which makes use of false or unwarranted claims on behalf of any such product or
30 disparages the quality, value, sale, or use of any other agricultural commodity;

31 (2) Provisions prohibiting unfair trade practices by which any producer or handler tends
32 toward establishment of monopoly, unfairly discriminates among customers as to price
33 or quality, or engages in fraudulent, deceptive, or misleading representations,
34 concealment, or other similar business practices which are harmful to its customers,
35 injurious to competitors, likely to bring into disrepute persons generally engaged in

1 production and handling of blueberries, or detrimental to the intent and purpose of this
2 article;

3 (3) Provisions for carrying on research studies in promoting the production, marketing,
4 sale, use and utilization, processing, and improvement of blueberries or any combination
5 thereof and for the expenditure of moneys for such purposes. In any research carried on
6 under this paragraph, the dean of the College of Agricultural and Environmental Sciences
7 of the University of Georgia and the commission shall cooperate in selecting the research
8 project or projects to be carried on from time to time. Insofar as practicable, such
9 projects shall be carried out by the College of Agricultural and Environmental Sciences,
10 but, if the dean of the college and the commission determine that the college has no
11 facilities for a particular project or that some other research agency has better facilities
12 therefor, the project may be carried out by other research agencies selected by the
13 commission; and

14 (4) Provisions establishing or providing authority for establishing, either as blueberries
15 are produced or are delivered by producers to handlers or as blueberries are handled or
16 otherwise prepared for market or as blueberries are marketed by producers or handlers,
17 an educational program designed to acquaint producers, handlers, or other interested
18 persons with quality improvement, including sanitation practices, procedures, or methods
19 as applied to blueberries.

20 2-8-143.

21 (a)(1) No marketing order or major amendment thereto directly affecting producers or
22 producer marketing issued pursuant to this article shall be made effective by the
23 commission until the finding of one or more of the following:

24 (A) That such marketing order or amendment thereto has been assented to in writing
25 by not less than 65 percent of the producers who are engaged within the area specified
26 in such marketing order or amendment thereto in the production for market or the
27 producer marketing of not less than 51 percent of the blueberries specified therein in
28 commercial quantities;

29 (B) That such marketing order or amendment thereto has been assented to in writing
30 by producers who produce not less than 65 percent of the volume of blueberries and by
31 51 percent of the total number of producers so engaged; or

32 (C) That such marketing order or amendment thereto has been approved or favored by
33 producers in a referendum among producers directly affected if the valid votes cast in
34 such referendum in favor of such marketing order or amendment thereto represent not
35 less than 51 percent of the total number of producers of blueberries of record with the

1 commission who marketed not less than 51 percent of the total quantity of the
2 blueberries marketed in the next preceding marketing season.

3 (2) Whenever any marketing order or major amendment thereto is issued by the
4 commission, the commission shall determine whether assent, approval, or favor of the
5 producers shall be by written assents or by referendum.

6 (3) If the commission determines that a referendum shall be had, the commission shall
7 establish a referendum period of 30 days. At the close of such referendum period, the
8 commission shall count and tabulate the ballots filed during such period. If from such
9 tabulation the commission finds that the number of producers voting in favor of such
10 marketing order or amendment thereto is not less than 51 percent of the total number of
11 producers of record with the commission and that such producers who voted in favor of
12 the marketing order or amendment thereto marketed not less than 51 percent of the total
13 volume of blueberries marketed by all producers of record with the commission during
14 the marketing season next preceding such referendum, the commission may make such
15 marketing order or amendment thereto effective. The commission is authorized to
16 prescribe such additional procedures as may be necessary to conduct such referendum.

17 (4) At a public hearing held to consider a proposed marketing order or major amendment
18 thereto which directly affects producers or producer marketing, the commission shall also
19 receive testimony or evidence from which it can determine whether the assent, approval,
20 or favor of such producers shall be determined by written assents or by referendum as
21 prescribed in this Code section. Upon the conclusion of any hearing which involves a
22 marketing order or a major amendment thereto directly affecting producers or producer
23 marketing, the commission shall make a finding, based upon the testimony and evidence
24 received, whether producer assent, approval, or favor shall be determined by written
25 assents or by referendum. If the commission finds that a referendum shall be had, it shall
26 direct that a referendum be held in accordance with this subsection.

27 (5) Any referendum or assent in writing to a marketing order under paragraphs (1), (3),
28 and (4) of subsection (a) of Code Section 2-8-142 shall be held pursuant to this Code
29 section; and upon the approval thereof by two-thirds of those voting therein, where the
30 total vote cast thereon represents not less than 25 percent of those eligible to vote or
31 where the total vote cast thereon represents not less than 25 percent of the total amount
32 of blueberries, such marketing order may be declared by the commission to be approved.

33 (6) In the event of the failure of any proposed marketing order to be approved, no
34 additional referendum thereon shall be held during a period of 12 months from the date
35 of the close of the previous referendum period.

1 (b) Subject to the provisions, restrictions, and limitations imposed in this article, the
2 commission may issue marketing orders regulating producer marketing and the processing,
3 distributing, or handling in any manner of blueberries by any and all persons engaged in
4 such producer marketing, processing, distributing, or handling of blueberries within this
5 state.

6 (c)(1) Upon the recommendation of not less than three members of the commission, the
7 commission may make effective minor amendments to a marketing order. The
8 commission may require a public hearing upon minor amendments if in its opinion the
9 substance of such minor amendments so warrants. The commission, however, shall not
10 be required to submit minor amendments for written assents or referendum approval.

11 (2) In making effective major amendments to a marketing order, the commission shall
12 follow the same procedures prescribed in this article for the institution of a marketing
13 order. For the purpose of this article, a major amendment to a marketing order shall
14 include, but shall not be limited to, any amendment which adds to or deletes from any
15 such marketing order any of the following types of regulations or authorizations:

16 (A) Authority for the establishment of plans for advertising and sales promotion of
17 blueberries;

18 (B) Authority to prohibit unfair trade practices;

19 (C) Authority for carrying out research studies in the production, processing, or
20 distribution of blueberries; or

21 (D) Authority to extend the application of the provisions of any marketing order to
22 portions or uses of blueberries not previously subject to such provisions or to restrict
23 or extend the application of such provisions upon the producers or handlers of such
24 portions or uses of such blueberries.

25 (3) Modification of any provisions of any marketing order in effect for the purpose of
26 clarifying the meaning or application of such provisions or of modifying administrative
27 procedures for carrying out such provisions is declared not to be a major amendment of
28 such marketing order.

29 (d) Upon the issuance of any order making effective a marketing order, or any suspension,
30 amendment, or termination thereof, a notice thereof shall be posted on a public bulletin
31 board maintained at the offices of the commission; and a copy of such notice shall be
32 published as the commission may prescribe. No marketing order, or any suspension,
33 amendment, or termination thereof, shall become effective until the termination of a period
34 of five days from the date of such posting and publication. It shall also be the duty of the
35 commission to mail a copy of the notice of such issuance to all persons directly affected
36 by the terms of such marketing order, suspension, amendment, or termination whose names

1 and addresses are on file in the office of the commission and to every person who files in
2 the office of the commission a written request for such notice.

3 (e) The commission shall have the power, consistent with this article and in accordance
4 with marketing orders and agreements made effective under this article, to establish such
5 general rules and regulations for uniform application to all marketing orders issued under
6 this article as may be necessary to facilitate the administration and enforcement of such
7 marketing orders. The provisions of subsection (d) of this Code section relative to posting,
8 publication, and time of taking effect shall be applicable to any such general rule or
9 regulation established pursuant to this subsection and applicable to marketing orders
10 generally. Such notice shall be furnished by the commission for each marketing order in
11 active operation.

12 (f) The commission shall have the power, consistent with this article, to establish
13 administrative rules and regulations for each marketing order issued and made effective as
14 may be necessary to facilitate the supervision, administration, and enforcement of each
15 such order. The provisions of subsection (d) of this Code section relative to posting,
16 publication, mailing of notice, and time of taking effect shall be applicable to any such
17 administrative rules and regulations.

18 (g) Unless extended as provided in this Code section, all marketing orders issued under the
19 authority of this article shall expire, terminate, and become of no force and effect at the
20 expiration of three years from the date of the issuance of the original marketing order or,
21 if such marketing order has been extended, at the expiration of three years after the date of
22 any such extension.

23 (h) In the event either one of the following conditions is complied with, a marketing order
24 shall be extended for a period of three years after the date of its original expiration:

25 (1) Assent has been given in writing to such marketing order by not less than two-thirds
26 of the producers participating; or

27 (2) Approval or favor of such marketing order has been given by producers in a
28 referendum among producers directly affected if at least $66 \frac{2}{3}$ percent of the votes cast
29 in such referendum favor the extension of such marketing order.

30 (i) If the commission determines that a referendum shall be held, the commission shall
31 establish a referendum period of 30 days, such referendum period to terminate at least 30
32 days prior to the expiration date of the marketing order which is the subject of such
33 referendum. At the close of such referendum period, the commission shall count and
34 tabulate the ballots cast during such period. If from such tabulation the commission finds
35 that the number of producers voting in favor of the extension of such marketing order is
36 not less than $66 \frac{2}{3}$ percent of the total number of ballots cast, then such marketing order

1 shall be extended for a period of three years after the expiration date. If it is found from
2 the tabulation of such referendum that the number of producers who had voted in favor of
3 the extension of such marketing order is less than the required 66 2/3 percent of the total
4 number of ballots cast, then the marketing order shall expire, terminate, and be of no force
5 and effect as provided in subsection (g) of this Code section.

6 2-8-144.

7 Marketing orders issued by the commission under this article may be limited in their
8 application by prescribing the marketing areas or portions of the state in which a particular
9 order shall be effective, provided that no marketing order shall be issued by the commission
10 unless it embraces all persons of a like class who are engaged in a specific and distinctive
11 agricultural industry or trade within the state.

12 2-8-145.

13 (a) For the purpose of providing funds to defray the necessary expenses incurred by the
14 commission in the formulation, issuance, administration, and enforcement of each
15 marketing order issued under this article, each such marketing order shall provide for the
16 levying and collection of assessments in sufficient amounts to defray such expenses. Each
17 marketing order shall indicate the maximum rate of any such assessment which may be
18 collected and the proportion, if any, payable by each producer and handler directly
19 regulated or affected by such marketing order. In administering such marketing order, the
20 commission shall adopt, from time to time, budgets to cover necessary expenses and the
21 assessment rate necessary to provide sufficient funds. If the commission finds that each
22 such budget and assessment rate are proper and equitable and will provide sufficient
23 moneys to defray the necessary expenses, it may approve such budget and rate of
24 assessment and order that each producer and handler so assessed shall pay to the
25 commission, at such times and in such installments as the commission may prescribe, an
26 assessment based upon the units in which blueberries are marketed or upon any other
27 uniform basis which the commission determines to be reasonable and equitable, but in
28 amounts which:

29 (1) In the case of producers, will not exceed 2.5 percent of the gross dollar volume of
30 sales of the blueberries affected by all such producers regulated by such marketing order;
31 or

32 (2) In the case of processors, distributors, or other handlers, will not exceed 2.5 percent
33 of the gross dollar volume of purchases of blueberries affected by the marketing order
34 from producers or of the gross dollar volume of sales of blueberries affected by the

1 marketing order and handled by all such processors, distributors, or other handlers
2 regulated by such marketing order during the marketing season or seasons during which
3 such marketing order is effective.

4 (b) Each marketing order which authorizes the carrying out of advertising and sales
5 promotion plans shall provide for the levying and collection of assessments in sufficient
6 amounts to defray the expenses of such activities. Each such marketing order shall indicate
7 the maximum rate of any such assessment and the proportion, if any, payable by each
8 producer and handler directly regulated or affected by such marketing order. The
9 commission shall adopt budgets to cover such expenses and establish the assessment rate
10 necessary to provide sufficient funds. If the commission finds that each such budget and
11 assessment rate are proper and equitable and will provide sufficient moneys to defray such
12 expenses, they may approve such budget and approve and levy such assessment. Any
13 assessments so established shall be based upon the units in which blueberries are marketed
14 or upon any other uniform basis which the commission determines to be proper and
15 equitable. Any assessment rates established under this subsection shall be in amounts not
16 to exceed 4 percent of the gross dollar volume of sales by all producers or by all processors,
17 distributors, or other handlers of blueberries regulated by such marketing order during the
18 marketing season or seasons during which such marketing order is effective.

19 (c) In the event the commission has reason to believe that the administration of a
20 marketing order will be facilitated or the attainment of the purposes and objectives of the
21 marketing order will be promoted thereby, the commission is authorized to borrow money,
22 with or without interest, to carry out any provision of any marketing order authorized by
23 this article and may hypothecate anticipated assessment collections applicable to such
24 respective provisions.

25 (d) In lieu of requiring advance deposits for defraying administrative or advertising and
26 sales promotion expenses until such time as sufficient moneys are collected for such
27 purposes from the payment of assessments established pursuant to this Code section, the
28 commission is authorized to receive and disburse for such purposes contributions made by
29 producers, processors, distributors, or other handlers. The commission shall not be held
30 responsible for the repayment of such contributions, provided that whenever collections
31 from the payment of established assessments credited to the respective marketing order
32 accounts are sufficient so to warrant, the commission shall repay contributions or shall
33 authorize the application of such contributions to the assessment obligations of the persons
34 who made such contributions.

35 (e) Each and every handler of blueberries for which an assessment has been established
36 by or pursuant to this article shall, at the time of purchase of any such blueberries from the

1 producer thereof, collect from such producer the assessment established by or in
2 accordance with this article and remit the same to the commission. The liability of such
3 handler under this article shall not be discharged except upon receipt of such sums by the
4 commission. For the purpose of this subsection, to ensure compliance with this Code
5 section, and for the administrative convenience of the commission in enforcing payment
6 and collection of such assessments, delivery by a producer to a handler for processing of
7 any blueberries upon which an assessment has been established shall be deemed a sale of
8 such blueberries within the meaning of this Code section; and the assessment shall
9 thereupon attach and become due, regardless of whether such handler actually purchases
10 such blueberries for himself or herself or only processes same for a consideration payable
11 by the producer or another person and such blueberries are thereafter sold to another
12 person, provided that upon collection of such assessment by the handler to whom such
13 blueberries are so delivered for processing only, no further or additional assessment shall
14 attach or become due by reason of the subsequent sale by such producer of such processed
15 blueberries to another person or handler.

16 (f) The commission may prescribe such rules as may be necessary and reasonable for the
17 orderly reporting and transmitting of assessments by handlers and may take all legal action
18 necessary to enforce payment of the same by handlers. The commission is authorized to
19 issue executions for the same in like manner as executions are issued for ad valorem
20 property taxes due the state. It shall be the duty of each and every sheriff of this state and
21 their lawful deputies, upon the request of the commission, to levy and collect such
22 executions and to make their return thereof to the commission in like manner as such tax
23 executions are levied and return thereof made to county tax collectors and tax
24 commissioners. The commission shall likewise be authorized to collect, by execution as
25 provided in this subsection or otherwise, directly from the producer against whom any
26 assessment levied under this Code section may be found due whenever it is determined that
27 such producer has sold such affected blueberries giving rise to such liability to a person
28 other than to a handler who has collected such assessment and is required by this Code
29 section to remit the same to the commission. Furthermore, until satisfaction is obtained,
30 the commission may proceed against such producer and the purchaser of such blueberries
31 simultaneously if the purchaser is a handler required to collect such assessment.

32 (g) Any moneys collected by the commission pursuant to this article shall be deposited in
33 a bank or other depository approved by the commission and shall be disbursed by the
34 commission only for the necessary expenses incurred by the commission, as approved by
35 the commission. Funds so collected shall be deposited and disbursed in conformity with
36 appropriate rules and regulations prescribed by the commission. All such expenditures by

1 the commission shall be audited at least annually by the state auditor and a copy of such
2 audit shall be delivered within 30 days after the completion thereof to the Governor and the
3 commission. If the commission is abolished, any funds remaining in its hands at such time
4 shall be used to pay the existing obligations of the commission and the expenses incurred
5 in winding up the affairs of the commission. Any excess remaining shall escheat to the
6 state and shall be paid into the state treasury as unclaimed trust funds.

7 (h) Moneys deposited by the commission pursuant to this Code section which the
8 commission determines are available for investment may be invested or reinvested by the
9 commission as provided for funds of this state or of any retirement system created by law,
10 provided that all moneys invested shall be invested in those areas of production that will
11 provide a return at the highest bank interest rate available. It shall be the duty of the
12 commission annually to review these investments and determine whether they are in
13 compliance with this Code section.

14 2-8-146.

15 (a) Any assessment levied or established in accordance with this article in such specified
16 amount as may be determined by the commission pursuant to this article shall constitute
17 a personal debt of every person so assessed and shall be due and payable to the commission
18 when payment is called for by the commission. In the event of the failure of such person
19 to pay any such assessment upon the date determined by the commission, the commission
20 may file an action against such person in a court of competent jurisdiction for the collection
21 thereof.

22 (b) In the event that any producer or handler duly assessed pursuant to this article fails to
23 pay to the commission the amount so assessed on or before the date specified by the
24 commission, the commission is authorized to add to such unpaid assessment an amount not
25 exceeding 10 percent of such unpaid assessment to defray the cost of enforcing the
26 collection of such unpaid assessment.

27 (c) The provisions of subsection (a) of this Code section with respect to collection of
28 assessments by action are in addition to and cumulative of the provisions of this article
29 authorizing the issuance of executions for assessments by the commission. The penalty
30 authorized under subsection (b) of this Code section may likewise be included in any
31 execution issued by the commission. Such remedies may be pursued concurrently until
32 satisfaction is obtained upon either. Any penalty recovered shall become a part of the
33 principal assessment levied and shall be for the use of the commission as are other moneys
34 received under this article.

1 2-8-147.

2 (a) The commission may require any and all processors or distributors subject to the
3 provisions of any marketing order issued pursuant to this article:

4 (1) To maintain books and records reflecting their operations under the marketing order;

5 (2) To furnish to the commission or its duly authorized or designated representatives
6 such information as may from time to time be requested by them relating to operations
7 under the marketing order; and

8 (3) To permit inspection by the commission or its duly authorized or designated
9 representatives of such portions of such books and records as relate to operations under
10 the marketing order.

11 (b) Information obtained by any person under this Code section shall be confidential and
12 shall not be disclosed to any other person, except to a person with like right to obtain the
13 information or to any attorney employed to give legal advice thereupon or by court order.

14 (c) In order to carry out the purposes of this Code section, the commission may hold
15 hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for
16 the production of books, records, or documents of any kind.

17 2-8-148.

18 Any person who violates any provision of this article or any marketing order duly issued
19 by the commission and in effect under this article or who violates any rule or regulation
20 issued by the commission pursuant to this article or of any marketing order duly issued and
21 effective under this article shall be civilly liable to the commission for a penalty in an
22 amount not to exceed \$500.00 for each and every violation thereof, the amount of such
23 penalty to be fixed by the commission after notice and hearing as provided by Chapter 13
24 of Title 50, the 'Georgia Administrative Procedure Act,' for contested cases and recoverable
25 by a civil action brought in the name of the commission or by execution issued in like
26 manner as for assessments provided by Code Section 2-8-145. Any moneys recovered
27 pursuant to this Code section shall be deposited and disbursed in accordance with
28 subsection (e) of Code Section 2-8-145 as are other moneys.

29 2-8-149.

30 (a) The Attorney General of this state shall, upon complaint by the commission, or may,
31 upon his or her own initiative if after examination of the complaint and evidence he or she
32 believes a violation has occurred, bring an action in the superior court in the name of the
33 commission for civil penalties or for injunctive relief, including specific performance of
34 any obligation imposed by a marketing order or any rule or regulation issued under this

1 article, or both, against any person violating any provisions of this article or of any
2 marketing order or any rule or regulation duly issued by the commission under this article.

3 (b) If it appears to the court, upon any application for a temporary restraining order, upon
4 the hearing of any order to show cause why a preliminary injunction should not be issued,
5 or upon the hearing of any motion for a preliminary injunction, or if the court finds in any
6 such action that any defendant therein is violating or has violated any provision of this
7 article or of any marketing order or any rule or regulation duly issued by the commission
8 under this article, then the court shall enjoin the defendant from committing further
9 violations and may compel specific performance of any obligation imposed by a marketing
10 order or any rule or regulation issued by the commission under this article. It shall not be
11 necessary in such event to allege or prove lack of an adequate remedy at law.

12 (c) In any action brought by the Attorney General to enforce any of the provisions of this
13 article or of any marketing order issued by the commission and effective under this article
14 or of any rule or regulation issued by the commission pursuant to any marketing order, the
15 judgment, if in favor of the commission, may provide that the defendant pay to the
16 commission the costs incurred by the commission in the prosecution of such action.

17 2-8-150.

18 (a) The commission on its own motion may, and upon the complaint of any interested party
19 charging a violation of any provision of this article or of any provision of any marketing
20 order or any rule or regulation issued by the commission and effective under this article
21 shall, either refer the matter directly to the Attorney General of this state or to any
22 prosecuting attorney of this state for the institution of legal proceedings thereupon or, if the
23 commission deems it necessary or advisable, immediately call an administrative hearing,
24 pursuant to the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure
25 Act,' governing contested cases, to consider the charges set forth in such verified
26 complaint.

27 (b) In case the matter is referred directly by the commission to the Attorney General or any
28 prosecuting attorney, it shall be the duty of such officer, if after examination of the
29 complaint and the evidence he or she believes that a violation has occurred, to bring an
30 appropriate action or actions in a court or courts of competent jurisdiction in this state.

31 (c) After an administrative hearing, if the commission finds that a violation has occurred,
32 it shall enter its findings and notify the parties to such complaint. In its discretion, the
33 commission shall either refer the matter to the Attorney General for the institution of legal
34 proceedings or notify such parties to cease and desist from further violation. Upon the
35 refusal or failure of such parties to comply or if the commission finds that the facts or

1 circumstances warrant immediate prosecution, the commission shall file a complaint with
2 the Attorney General or with any prosecuting attorney of this state requesting that such
3 officer commence any or all actions authorized in this article against such respondent or
4 respondents in a court of competent jurisdiction.

5 2-8-151.

6 (a) Any person who willfully renders or furnishes a false or fraudulent report, statement,
7 or record required pursuant to this article or any marketing order effective under this article
8 shall be guilty of a misdemeanor.

9 (b) Any person engaged in the handling or processing of blueberries or in the wholesale
10 or retail trade thereof who fails or refuses to furnish, upon request, information concerning
11 the name and address of the person from whom he or she has received blueberries regulated
12 by a marketing order issued and in effect under this article and the quantity of such
13 blueberries received shall be guilty of a misdemeanor.

14 2-8-152.

15 Any person who violates any provision of this article or any provision of any marketing
16 order duly issued by the commission under this article shall be guilty of a misdemeanor.

17 2-8-153.

18 The penalties and remedies prescribed in this article with respect to any violation
19 mentioned shall be concurrent and alternative. Neither singly nor combined shall such
20 penalties and remedies be exclusive; rather, either singly or combined, such penalties and
21 remedies shall be cumulative with any and all other civil, criminal, or alternative rights,
22 remedies, forfeitures, or penalties provided or allowed by law with respect to any such
23 violation.

24 2-8-154.

25 This article shall not be applicable to any retailer of blueberries except to the extent that
26 any retailer also engages in the processing or distribution of blueberries as defined in this
27 article.

28 2-8-155.

29 The promulgation, adoption, and amendment of rules and regulations by the commission
30 shall be subject to the requirements of Chapter 13 of Title 50, the 'Georgia Administrative
31 Procedure Act.'

- 1
- SECTION 2.**
- 2
- All laws and parts of laws in conflict with this Act are repealed.